

### **REMARKS**

Applicant respectfully requests consideration of the subject application as amended herein. This Amendment is submitted in response to the Office Action mailed April 12, 2005. Claims 1-4, 7-10, 13 and 14 stand rejected. In this Amendment, claims 1-5, 7-11, 13 and 15 have been amended. No new matter has been added.

#### **35 U.S.C. § 102 Rejections**

Claims 1-5, 7-11 and 13-15 are rejected under 35 U.S.C. §102(e) as being anticipated by Sugar (U.S. Patent Application No. 2002/0061031, hereinafter “Sugar”). Claims 5, 11 and 15 are rejected under 35 U.S.C. §102(e) as being anticipated by Mansfield (U.S. Patent No. 6,704,346, hereinafter “Mansfield”).

Applicant does not admit that Sugar and Mansfield are prior art and reserves the right to swear behind these references at a later date. Regardless, Applicant respectfully submits that the pending claims are patentable over the above reference.

#### **Claims 1-4, 7-10 and 13-14**

The cited art fails to teach or suggest, inter alia, as required by claim 1: “selecting, from the plurality of data packet types, a data packet type to transmit a portion of the data in accordance with characteristics of the transmission.” Similar limitations are included in claims 7 and 13.

Sugar discloses a method for interference mitigation among multiple WLAN protocols. Sugar uses a multiple protocol communication device (MPD) that functions as a Bluetooth master to exchange data with other slave terminals. The MPD has at least 5

packets in the queue to be transmitted to a slave terminal, allowing the MPD to use 5-slot packets to achieve the highest throughput efficiency. If less than 5 packets are available, the MPD transmits single or triple-slot packets. Hence, Sugar has specific packets in the queue that are transmitted to a slave terminal.

Sugar does not disclose identifying or selecting a data packet type satisfying data transmission characteristics. This is because the data packet type has already been identified and selected (i.e., since the specific packets are already in the queue, a data packet type does not need to be identified or selected).

The presently claimed invention, in contrast, determines a number of time-slots available for transmission, identifies a plurality of data packet types that fit into the available time-slots, and then selects a data packet type to transmit a portion of data identified for transmission in accordance with characteristics of the transmission. Thus, the specific packet is not in queue until after the data packet type which satisfies the characteristics of the transmission has been identified and selected.

#### Claims 5, 11 and 15

The cited art fails to teach or suggest, inter alia, as required by claim 5: “identifying a data packet type from a plurality of data packet types which is least prone to a transmission error.” Similar limitations are included in claims 11 and 15.

As discussed above with respect to claim 1, Sugar does not teach or suggest identifying a data packet type since the specific packets are already in the queue.

Mansfield is directed to a method and apparatus to provide improved microwave interference robustness in RF communications devices. As with Sugar, the specific packets are already in the queue in Mansfield. Mansfield describes that the packet

header, contained in every BT packet, defines the packet type which follows. Thus, the packet type has already been identified and selected before the data for transmission and available time slots have been identified.

In contrast, the presently claimed invention, identifies data for transmission and identifies available time slots before a data packet type least prone to transmission is identified.

Thus, Sugar does not teach or suggest the above features of the present invention that are included in the language of independent claims 1, 5, 7, 11, 13 and 15. Therefore, the present invention as claimed in claims 1, 5, 7, 11, 13 and 15, and their corresponding dependent claims, is not anticipated by Sugar. Mansfield also does not teach or suggest the above features of the present invention that are included in the language of independent claims 5, 11 and 15.

Applicant respectfully requests the withdrawal of the rejection under 35 U.S.C. § 102(e) and submits that the pending claims are in condition for allowance.

#### Allowable Subject Matter

Applicant thanks the Examiner for indicating that claims 6, 12 and 16 contain allowable subject matter. The Examiner has object to the claims as being dependent on a rejected base claim. However, claims 6, 12 and 16 are independent claims and are not dependent on a rejected base claim. Accordingly, Applicants request withdrawal of the objection to claims 6, 12 and 16 and submits that claims 6, 12 and 16 are now in condition for allowance, and request allowance of said claims.

Deposit Account Authorization

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Marina Portnova at (408) 720-8300.

Respectfully submitted,

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